UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

DIN CELAJ, :

: Plaintiff, :

-against- : 1:13-cv-1290 (ALC)

:
. ODDED DENVING THE

UNITED STATES OF AMERICA, : <u>ORDER DENYING THE</u>

DEFENDANT'S MOTION FOR

Defendants.: **RECONSIDERATION AND DENYING**

THE GOVERNMENT'S MOTION FOR

RECONSIDERATION WITHOUT

PREJUDICE

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ANDREW L. CARTER, JR., United States District Judge:

A portion of my February 1, 2021 opinion vacated Counts V and VI of the indictment, finding that attempted Hobbs Act Robbery is not a crime of violence under 18 U.S.C. § 924(c). As noted in the opinion, at that time, the Second Circuit had not addressed the issue. On April 22, 2021, the Second Circuit in *McCoy* decided that attempted Hobbs Act Robbery is a crime of violence. *United States v. McCoy*, 995 F. 3d 32 (2nd Cir. 2021).

This intervening change of law would typically entitle the government to reconsideration of my earlier decision. However, both parties have asked me to stay granting the motion for reconsideration because the Supreme Court has granted cert in a case turning on the same issue: *United States v. Taylor*, Supreme Court Dkt. No. 20-1459. Moreover, a cert petition has been filed in *McCoy*. I agree that I should not grant the

motion for reconsideration now. However, since the parties will need to address the Supreme Court's decision in *Taylor* to fully brief any motion for reconsideration, for the sake of efficiency, I deny the government's motion for reconsideration without prejudice. Following the Supreme Court's decision, the government may file a more comprehensive motion for reconsideration.

The defendant wants me to reconsider my denial of the portions of his ineffective assistance claim relating to his alleged denial of his right to testify and his lawyer's decision to enter into a stipulation at trial. The defendant's motion for reconsideration is denied. Under our local rules, a motion for reconsideration must be filed within 14 days. While the government's delay in seeking a motion for reconsideration was justified, based on the change in the law emanating from a circuit decision 3 months later, the defendant offers no justification for the delay, nor does he satisfy the other requirements for reconsideration.

The court will still need to conduct an evidentiary hearing regarding the remainder of Celaj's ineffective assistance claim. On or before October 27, the parties should file a joint status report regarding their availability for this evidentiary hearing in January and/or February of 2022.

SO ORDERED.

Dated: October 7, 2021

New York, New York

/s/ Andrew L. Carter, Jr.
ANDREW L. CARTER, JR.
United States District Judge